IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.57 OF 2005

Shri Santosh Babu Pawaskar ...Applicant.
V/s
State of Maharashtra
(at the instance of Naupada
Police Station, Thane) ...Respondent.

Mr. Subodh Desai for the applicant.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 16th February, 2005

P.C.

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. Applicant is challenging the show-cause notice which is issued by the Special Executive Magistrate, Thane Division, Thane under section 111 of the Criminal Procedure Code, asking the applicant to show cause why a bond of good behaviour in the sum of Rs 3000/- should not be taken from him.

3. Brief facts of the case are that several complaints were filed against the applicant for having allegedly committed offences punishable under section 406, 420 read with section 34 of the Indian Penal Code and sections 3 and 4 of the M.P.I.D. Act. Thereafter, a show cause notice was issued by the Special Executive Magistrate under section 111 of the

Criminal Procedure Code. Applicant filed an application for recalling the said show cause notice which was issued by the Special Executive Magistrate. However, the said application was withdrawn by the applicant in view of the judgments of the Apex Court in the case of Adalat Prasad Vs. Rooplal Jindal and Ors reported in 2004(7) SCALE 137 and in the case of Subramanium Sethuraman Vs. State of Maharashtra and another, reported in 2005 SCC (Cri) 242 and the present application has been filed under section 482 of the Criminal Procedure Code for quashing the show-cause notice which is issued by the Special Executive Magistrate.

4. The learned Counsel appearing for the applicant submitted that in view of the ratio laid down in the aforesaid two judgments of the Supreme Court, the Executive Magistate neither has jurisdiction nor authority to recall the show-cause notice which is issued by him as the said order is in the nature of order passed by him under section 204 of the Criminal Procedure Code. He further submitted that in view of the provisions of section 116 sub-clause (2) of the Cr.P.C., the procedure which is required to be followed by the Executive Magistrate is as prescribed in summons cases. He submitted that the aforesaid

judgments of the Apex Court would be squarely applicable to the facts of the present case.

5. I am unable to accept the submissions made by the learned Counsel for the applicant. The present show-cause notice which is issued under Chapter VIII of the Criminal Procedure Code which pertains to proceedings regarding security for keeping the peace and for good behaviour and which proceedings are initiated by the Executive Magistrate. Under the aforesaid provisions, the Executive Magistrate has a power to issue show-cause notice and hold an inquiry in the said case and accordingly direct the person to whom the show cause notice is issued, if he is is satisfied that the information provided by the Police Officer is true and correct, to furnish bond of good behaviour for a fixed period. Section 116 sub-clause (2) of the Cr.P.C. reads as under:-

> "**116. Inquiry as to truth of information.-**
>
> (1).....
>
> .....
>
> (2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons cases."

From the perusal of sections 109 and 111 read with the provisions of sub-clause (2) of section 116 of the Cr.P.C., it can be seen that the procedure which is required to be followed by the Executive Magistrate should be as far as practicable in the manner prescribed for conducting trial and recording evidence in summons cases. The said section does not state that the provisions of the said Chapter XX which deal with the procedure of summons cases shall apply mutatis mutandis to the provisions of Chapter VIII. The show-cause notice which is issued by the Magistrate is not in the nature of issuance of summons as contemplated under section 204 of the Cr.P.C. The provisions of section 109 and section 111 contemplate that if the show-cause notice is issued, Executive Magistrate has to make an inquiry regarding the correctness of the information received from the Police Officers. The accused, therefore, has a right to appear before the Magistrate and to satisfy the Magistrate regarding the allegations which are made against him. The ratio of the judgments of the Supreme Court in the case of Adalat Prasad (supra) and in the case of Subramanium Sethuraman (supra), therefore, in my view, would not be applicable to the proceedings initiated under Chapter VIII of the

Criminal Procedure Code. In the light of this, the applicant is directed to file an application before the Executive Magistrate and make his submissions for recalling the show-cause notice which has been issued by him. On such an application being made, the Executive Magistrate shall hear the application and pass an appropriate orders.

6. In the event any adverse order is passed against the applicant, the said order shall be kept in abeyance for a period of four weeks so that the applicant can challenge the said order before the appropriate authority.

7. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.